(1) Supreme Court, U.S.
FILED

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CASE NUMBER _____

IN THE UNITED STATES SUPREME COURT
1999-2000

Oregon Supreme Court Case No. S46823

William Ray Smith, Petitioner

v.

Department of Revenue, Respondent

And

Douglas County Assessor, Intervenor

On Petition for Writ of Certiorari to the
Oregon Supreme Court

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Without counsel
c/o General Delivery
Days Creek, Oregon
97429

Oregon Governor
John A. Kitzhaber
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19 pp

QUESTIONS PRESENTED FOR REVIEW

Does Oregon have the right to assess, levy and tax the property granted to Me by Patent Number 36-90-0004 following their failure to assert such right during the patenting process?

Does Oregon have the right to assess, levy and tax the property granted to Me by Patent Number 36-90-0004 even though I paid the purchase price in silver coin and have not recorded the patent in the *Office of the County Clerk for Douglas County, Oregon?*

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE OREGON SUPREME COURT

I, William Ray Smith, respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

June 27th, 2000 the Oregon Supreme Court denied My Motion for Reconsideration (APP A) of their Appellant Judgment (APP B) dated April 13, 2000 in which they affirmed the (Oregon) Tax Court judgment of September 3, 1999 (APP C). The Magistrate Division of the Tax Court granted defendants' Motion to Dismiss and denied My Motion for Summary Judgment May 10, 1999 (APP D). This case is unpublished.

BASIS FOR JURISDICTION

Date of Appellant Judgment to be reviewed is April 13, 2000. My Motion for Reconsideration was denied June 27th, 2000. Oregon Department of Revenue is the adverse party, for that reason, I seek to invoke this Court's original jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The Oregon Supreme Court, this State's court of last resort, decided My case in a way that conflicts with United States law, decisions of this Court, decisions of their own making and Oregon Statutes.

United States Law

Oregon Admission Act (1859). Wherein it says in part, "...said State shall never interfere with any regulations

Congress may find necessary for securing the title in said soil to bona fide purchasers thereof."

General Mining Laws, R.S. 2329, 2331 as amended, 30 U.S.C. 35.

Patent Number 36-90-0004 (My Mineral Patent). Wherein it says in part, "...pursuant to the laws aforesaid there is hereby granted by the UNITED STATES unto the said William Ray Smith the said mining premises herein described. TO HAVE AND TO HOLD said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging..."

Federal Cases

Summa Corp. v. California, 104 S.Ct. 1751 (1984). Wherein it says that Summa Corp. owns the fee title; and California made no claim to any interest in the land at the time of the patent proceeding, and no mention was made of any such interest in the patent that was issued; therefore, such a servitude (in that case, California wanted to dig a drainage ditch across Summa's property) was forfeited by the State's failure to assert it in the federal patent proceedings."

On page 1753 the case goes on, "The interest claimed by California is one of such substantial magnitude that regardless of the fact that the claim is asserted by the State in its sovereign capacity, this interest must have been presented in the patent proceedings or be barred." And, "The State's claim to such servitude must have been presented in the federal patent proceeding in order to survive the issue of a fee patent."

U.S. v. Nye County, Nev., 920 F. Supp. 1108 (D.Nev. 1996). Wherein it says, "The title to public lands did not pass to the states upon admission. Thus, the power over the public land thus entrusted to congress is without limitations."

On page 1120 it goes on "At no time in this litigation has Nye County offered any argument that it can declare or establish rights-of-way across federal public lands that are not recognized by federal law without violating the Supremacy Clause."

U.S. v. Oregon, 295 U.S. 1, 611, 621 (1935). Wherein it says, "Laws of the United States alone control disposition of title to lands of Untied States within territorial limits of states to private individuals and states are powerless to place limitation or restriction on such control."

The case goes on to say, "Grants by the United States of lands within the state are not to be construed in accordance with state law."

Oregon State Cases

State v. Webb, 324 Or. 380, 386 (1996). Wherein it says, quoting 2A *Sutherland Statutory Construction* § 47.33 at 270 (5th Ed 1992), "Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma."

Oregon Revised Statutes

ORS 307.010 ***REAL PROPERTY*** defined: (1) "Real property" includes the land itself, above or under water; all improvements structures machinery, equipment or fixtures erected upon, above or affixed to the same; all mines, minerals, quarries and trees in, under or upon the land; all water rights and water powers and all other rights and privileges in any wise appertaining to the land; any estate, right, title or interest whatever in the land or real property, less than the fee simple."

ORS 174.010 ***General rule for construction of statutes***. In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms

or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

STATEMENT OF THE CASE

On or about December 1, 1989 pursuant to the General Mining Laws, R.S. 2329, 2331 as amended, 30 U.S.C. 35, I received Mineral Patent 36-90-0004 for 85.36 acres of placer mining ground. I paid the purchase money in silver coin (APP E). I did not record My Mineral Patent in the *Office of the County Clerk for Douglas County, Oregon*. Respondents acknowledge that I have the fee title to My property.

On or about December 15, 1998 the *Office of the Assessor & Tax Collector*, 1036 SE Douglas St., County Courthouse, Roseburg, OR 97470 added My 85.36 acres to the real property tax roll of Douglas County. I appealed the assessment and levy to the Oregon Tax Court, then to the Oregon Supreme Court. Both courts ruled against me. My Motion for Reconsideration was denied June 27, 2000.

Douglas County Assessor was joined as an Intervenor on behalf of the Oregon Department of Revenue.

REASONS FOR GRANTING THE PETITION

1. The Oregon Supreme Court has decided an important state question in a way that conflicts with relevant federal law.

2. The Oregon Supreme Court has decided an important state question in a way that conflicts with this Court's decisions.

3. The Oregon Supreme Court has taken a position in opposition to the United States Congress.

4. The Oregon Supreme Court has decided an important state question in a way that conflicts with its own decisions and state statutes.

5. The heart of this issue is property rights that this Court needs to give direction to once again.

Question Present for Review

1. Does Oregon have the right to assess, levy and tax the property granted to Me by Patent Number 36-90-0004 following their failure to assert such right during the patenting process?

According to the Oregon Admission Act, Oregon agreed that 'title to the public lands remained with the United States' and that 'they would not interfere with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof.' I am a bona fide purchaser of the soil described in My patent. However, Oregon is interfering with the General Mining Law by saying Congress did not grant to me the immunities as recited in My patent. The immunities thereunto belong, is the immunity from taxation inherent in the fee simple status of the land I received patent to.

U.S. v. Oregon says that 'the Laws of the United States alone control disposition of title to lands of Untied States within territorial limits of states to private individuals and states are powerless to place limitation or restriction on such control.' Again, Oregon, by assessing and levying real property tax, has placed a limitation and restriction on the disposition of the land described in My patent. They are saying that the United States cannot pass to private individuals the immunity from taxation inherent in the fee simple status of the land.

Yet, both the Oregon Constitution and *Oregon* say Oregon cannot do that.

And, this Court upheld both of those when ruling in *Nye County* 'that the title to public lands did not pass to the states upon admission. Thus, the power over the public land thus entrusted to Congress is without limitations.' And accordingly, the federal government can

pass to private individuals the immunity from taxation inherent in the fee simple status of the land.

That is what they did when they issued My patent.

Furthermore, this Court ruled in *Summa* that if a state did not come forward during the patent proceeding, any claim that it may have had in the patented land is barred. Oregon did not come forward during the patent proceeding with a claim to the right to assess and levy taxes on the real property described in My patent. Therefore, following the same reasoning as this Court used in *Summa* Oregon is barred from doing so now.

Again from the *Oregon* case this Court ruled that grants by the United States of lands within the state are not to be construed in accordance with state law.

However, that is exactly what Oregon is now doing to Me by assessing and levying real property tax on My patented property. Contrary to the *Oregon* case, Oregon is saying state law allows them to assess and levy real property tax on the land granted to Me by patent.

My patent says that the United States granted to Me all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging. The immunities that the United States granted to Me were the immunities from taxation. And, since Oregon does/did not have any inherent right/interest in My property prior to the issuance of the patent and they did not come forward during the patent proceeding and reserve/claim any right/interest in it, they are therefore, according to *Summa*, barred from doing so at this late date.

ORS 307.010 defines, in part, the real property subject to taxation in Oregon as ... "any estate, right, title or interest whatever in the land or real property, less than the fee simple." And, ORS 174.010 "(that) the judge is simply to ascertain and declare what is, in terms or in

substance, contained therein, not to insert what has been omitted, or to omit what has been inserted;"

Also, the *Webb* case (which is a decision made by the Oregon Supreme Court) says that if the last antecedent is separated from the preceding one with a comma then it applies to all antecedents instead of only to the immediately preceding one. In ORS 307.010 the phrase *less than the fee simple* **is** separated from the last antecedent by a comma.

Yet the Oregon Tax Court, agreeing with the Oregon Department of Revenue, ruled that the last antecedent in ORS 307.010, *less than the fee simple*, modifies only the wording that appears after the last semicolon and not the whole statute. Accordingly, as argued by the Department of Revenue, the statute, when so read, defines "real property" to include both land held in fee simple and land held in less than fee simple. The Oregon Supreme Court agreed with the Department's argument.

However, their reading of the statute in My case does not agree with the *Webb* case (that they decided in 1996) and Sutherland Statutory Construction that is cited in the case as the turning point when making the *Webb* decision.

I contend, however, that it makes no difference whether the qualifying phrase *less than the fee simple* applies to all of ORS 307.010 or only to the last antecedent. The last antecedent of ORS 307.010 reads, "any estate, right, title or interest whatever in the land or real property," followed by the qualifying phrase *less than the fee simple*.

The estate, right, title and interest I have in the land or real property is that of fee simple, it is not *less than the fee simple*; therefore, Oregon does not have the right to assess, levy and tax the real property.

The Judges of the Oregon Supreme Court violated *ORS 174.010* ***General rule for construction of statute***. Their

'office . . . is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted;' When ruling as they did in My case, they omitted what had been inserted, the comma in front of the phrase *less than the fee simple* in ORS 307.010.

2. Does Oregon have the right to assess, levy and tax the property granted to Me by Patent Number 36-90-0004 even though I paid the purchase price in silver coin and have not recorded the patent in the *Office of the County Clerk for Douglas County, Oregon*?

I paid the purchase price in United States silver coin. I **did not** use debt money, as a result of that I **did not** discharge my obligation to pay, but I actually paid for the property thereby gaining ownership rather than having only an equitable interest in the property.

Furthermore, I **did not** record My patent in the *Office of the County Clerk for Douglas County, Oregon*. If I had recorded My patent, I would have given up ownership for an equitable interest having only the use and possession of My property making it subject to the sovereign, Douglas County.

Therefore, because I paid the purchase price in silver coin and did not record the patent, there is **no minimum link** between the subject of the tax (My patented property) and the taxing authority (Douglas County/Oregon Department of Revenue).

REASONS FOR GRANTING THE WRIT

The ruling by the Oregon Supreme Court conflicts with the following laws of the United States: the Oregon Admission Act (1859); the General Mining Laws, R.S. 2329, 2331 as amended, 30 U.S.C. 35; and Patent Number 36-90-0004. The ruling by the Oregon Supreme Court is also in violation of the following cases decided by this Court: U.S. v. Nye County, Nev., 920 F. Supp. 1108

(D.Nev. 1996); Summa Corp. v. California, 104 S.Ct. 1751 (1984); and, U.S. v Oregon, 295 U.S. 1, 611, 621 (1935). Furthermore, the Oregon Supreme Court's ruling violates State v. Webb, 324 Or. 380, 386 (1996), their own previously decided case. In addition, the Oregon Supreme Court's ruling violates the following Oregon Statutes: ORS 307.010 and ORS 174.010. The above cites clearly defeat Oregon's assessment and levy on My patented property.

In addition, since there is no minimum link between the subject of the tax and taxing authority, Oregon again is left without a basis for assessment and levy of real property tax on My patented property.

CONCLUSION

IT IS MY PRAYER that this Court will find the above reasons compelling and grant this PETITION for a writ of certiorari.

Dated this 22nd day of ~~July~~ Sept, 2000.

Respectfully submitted,

William Ray Smith

William Ray Smith,
Petitioner as Myself
c/o General Delivery
Days Creek, Oregon 97429

No phone

IN THE SUPREME COURT
OF THE SATE OF OREGON

William Ray Smith, Petitioner

v.

Oregon State Department of Revenue, Respondent

and

Douglas County Assessor, Intervenor.

Oregon Tax Court
Case No. 4407

Oregon Supreme
Court No. S46823

Upon consideration by the court.

The Court has considered the petition for reconsideration and orders that it be denied.

Dated this 27th day of June 2000.

/s/

WALLACE P. CARSON JR.
CHIEF JUSTICE

IN THE SUPREME COURT
OF THE SATE OF OREGON

William Ray Smith, Petitioner — Oregon Tax Court Case No. 4407

v. — Oregon Supreme Court No. S46823

Oregon State Department of Revenue, Respondent

and

Douglas County Assessor, Intervenor.

APPELLATE JUDGMENT
April 13, 2000

En Banc

On Appeal from the Oregon Tax Court.*

Argued and submitted March 8, 2000.

William Ray Smith, pro se, Days Creek, argued the cause and filed the brief for appellant.

Robert W. Muir, Assistant Attorney General, Salem, argued the cause for respondent. Wendy Sanderson, Assistant Attorney General, filed the brief for respondent. With her on the brief was hardy Myers, Attorney General.

Paul E. Meyer, Douglas County counsel, Roseburg, filed the brief for intervenor Douglas County Assessor.

VAN HOOMISSEN, J.

The judgment of the Tax Court is affirmed.

*Appeal from judgment of the Oregon Tax Court, September 3, 1999.
VAN HOOMISSEN, J.

Taxpayer challenges the right of the Douglas County Tax Assessor to assess taxes on land that taxpayer acquired pursuant to a federal mining patent. The Oregon Tax court dismissed the challenge. Taxpayer appeals. We affirm.

Taxpayer asserts that his land is exempt from state taxation. All real property within the state is taxable under ORS 307.030. ORS 307.010 defines real property as:

> "the land itself, above or under water; all buildings, structures, improvements, machinery, equipment or fixtures erected upon, above or affixed to the same; all mines, minerals, quarries and trees in, under or upon the land; all water rights and water powers and all other rights and privileges in any wise appertaining to the land; and any estate, right, title or interest whatever in the land or real property, less than the fee simple."

(Emphasis added.) Taxpayer argues that his land is not subject to taxation under the statute because he holds title in fee simple. According to taxpayer, only property that is held in less than fee simple is subject to taxation. The Department of Revenue (department) responds that the phrase "less than the fee simple" modifies only the wording that appears after the last semicolon in the statutory definition of "real property," viz., "any estate, right, title or interest whatsoever in the land." According to the department, the statute, when so read, defines "real property" to include both land held in fee simple and land held in less than fee simple. We agree with the department.

Taxpayer further argues that his patent conveys to him the federal government's "immunity" from taxation. Taxpayer's patent grants land to him to hold

> "together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named * * *."

(Emphasis added.) land held by the federal government is tax-exempt, ORS 307.040, and taxpayer argues that one of the "immunities" granted to him in his patent is the federal government's immunity from taxation.

The department relies on Crawford v. Dept. of Rev., 14 OTR 544 (1999), in which the Tax Court addressed an argument virtually identical to taxpayer's, concluding:

> "First, the United States government cannot confer its privileges and immunities upon patent grantees. Second, the rights, privileges, and immunities recited in the patent are those appended to or attached to the land, not those inherent in the federal government."

14 OTR at 556. we agree with the Tax Court's analysis in Crawford. The judgment of the Oregon Tax Court is affirmed.

IN THE OREGON COURT
REGULAR DIVISION
Property Tax

William Ray Smith, Petitioner

Oregon Tax Court
Case No. 4407

v.

Oregon State Department of Revenue, Respondent

and

Douglas County Assessor, Intervenor.

JUDGMENT

This matter came on for a telephone case management conference on September 2, 1999, at 2:30 p.m. William smith represented himself; Wendy Sanderson, Assistant Attorney General, represented the Department of Revenue; and Paul Meyer, County counsel, represented Douglas County. After discussing the issues, the court finds that this case is controlled by the court's decision in Crawford v. Department of Revenue, ___ OTR ___, Tax Court Case No. 4358 (May 3, 1999). Mr. Smith argues that ORS 307.010[1] exempts his property from taxation. The court disagrees.

Intervenor has filed Rule 21 motions to strike, to dismiss, for judgment on the pleadings, and for sanctions. All of those motions except the motion for sanctions will be moot as a result of this Judgment. The court has denied Intervenor's motion for sanctions. Now, therefore,

[1] All references to Oregon Revised Statutes are to 1995.

IT IS ADJUDGED and DECREED that Plaintiff's Complaint be dismissed with prejudice. Costs to neither party.

Dated this 3rd day of September, 1999.

/s/

Carl N. Byers
Judge

IN THE MAGISTRATE DIVISION
OF THE OREGON COURT

Income Tax

William Ray Smith, Petitioner

Oregon Tax Court
Case No. 4407

v.

Oregon State Department of Revenue, Respondent

and

Douglas County Assessor, Intervenor.

DECISION
Filed May 10, 1999

This matter came before the court on defendant's Motion to Dismiss, received January 29, 1999, requesting that the Complaint be dismissed. Plaintiff, on February 9, 1999, filed an objection to defendant's Motion to dismiss and his own Motion for Summary Judgment.

Plaintiff owns land in Douglas County that he claims is exempt from taxation. He received the land from the United States in the form of a mineral patent on December 1, 1989. he received the land 'with all the rights, privileges, immunities, and appurtenances of whatsoever nature." Plaintiff's Complaint, Exhibit B. he claims that he obtained from the Untied States the government's immunity from taxation. He also claims that the definition of real property in ORS 307.010 includes only interests in land that are less than fee simple. Since he owns his land in fee simple, he claims the state may not tax it.

In *Crawford v. Dept. of Rev.*, OTC-RD No. 4358 (May 3, 1999), the court ruled on this very issue. The court held that "[t]he United States government no longer has any interest in such property right, and the property is no longer exempt." *Id* at 3. the property is not exempt because "the rights, privileges, and immunities recited in the patent are those appended to or attached to the land, not those inherent in the federal government." *Id*.

IT IS THE DECISION OF THE COURT that defendant's Motion to Dismiss is granted. Plaintiff's Motion for Summary Judgment is denied.

Dated this 10th day of May 1999.

/s/

SALLY L. KIMSEY
MAGISTRATE

BEST AVAILABLE COPY

Form 1370-18
(July 1984)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

BUREAU OF LAND MANAGEMENT
1989 JUN 23 AM 9 30
OREGON STATE OFFICE
PORTLAND, OR

65482

Date June 23, 1989

TEMPORARY RECEIPT

Credit is subject to clearing of any checks. This is not a permit, license, or lease.

Received $ 200.00 (Cash Silver Coin) OR40277

On account of Purchase Money for Mineral Patent

Received from: William R. Smith
4479 Corn Creek Rd.
Days Creek, OR 97429

John Hewitt
ACCOUNTING OFFICE

APP 5

CASE NUMBER _____

IN THE UNITED STATES SUPREME COURT
1999-2000

William Ray Smith, Petitioner, v. Dept. of Revenue, Respondent, and Douglas County Assessor, Intervenor.	)))))))	Oregon Supreme Court Case No. S46823 **CERTIFICATE OF SERVICE**

The undersigned certifies that on 9-22- 2000 ~~one~~ 3 true copy of the

Petition for Writ of Certiorari
and this **Certificate of Service**

were served by first class mail, postage pre-paid, upon the following counsel;

Respondent's counsel
Wendy Sanderson
Assistant Attorney General
Tax Section
General Counsel Division
Department of Justice
100 Justice Building
Salem, Oregon 97310

Intervenor's counsel
Paul E. Meyer
Assistant County Counsel
321 County Courthouse
Roseburg, Oregon 97470

Oregon Governor
John A. Kitzhaber
254 State Capitol
Salem, Oregon 97310

And, that the filing fee ~~and the original~~ and forty (40) copies of the above documents, were served by mailing them, postage prepaid, to this Court whose address is: Clerk of the Court, SUPREME COURT OF THE UNITED STATES, 1 First Street, N.E., Washington, DC 20543.

Served without prejudice,

William Ray Smith

William Ray Smith, Petitioner as Myself
c/o General Delivery
Days Creek, Oregon (97429)

No telephone